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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,731	08/21/2003	Francois Vardon	241763US6 DIV	6198

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OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER

WILKENS, JANET MARIE

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/644,731	<b>Applicant(s)</b> VARDON, FRANCOIS	
	<b>Examiner</b> Janet M. Wilkens	<b>Art Unit</b> 3637	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 May 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 10-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 10/070,803.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>21/8/03</u> . | 6) <input type="checkbox"/> Other: _____  |

***Election/Restrictions***

Applicant's election with traverse of Group I (claims 1-9, 19 and 20) in the reply filed on May 27, 2004 is acknowledged. The traversal is on the ground(s) that the examiner has not provided sufficient reason for the distinctiveness of the inventions. This is not found persuasive because (1) It should be noted that product by process limitations are not given any weight in article claims. Therefore, how the shelf of claims 1-9, 19 and 20 is made is irrelevant; (2) If applicant is still not satisfied with the reasoning given for the distinction of the inventions, the examiner also contends that a different product, such as a glass panel/plastic rimmed table or window, can be made using the method of claims 10-18; and (3) Class 312 is an article class and does not provide for "plastic article" manufacturing claims. (Class 312 **does not** provide for method of making claims.) The type of process claimed in claims 10-18 is routinely handled in class 156 (Note: on April 21, 2003, the undersigned discussed claims 10-18 with primary examiner Jeff Aftergut who agreed that these method claims belonged in class 156; adhesive bonding and misc. chemical manufacture). The requirement is still deemed proper and is therefore made FINAL.

Claims 10-18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

***Priority***

Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. 10/070,803, filed on July 22, 2002.

***Information Disclosure Statement***

The information disclosure statement filed August 21, 2003 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. The German reference has been placed in the application file, but the information referred to therein has not been considered.

***Drawings***

However, the drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the adhesive/gasket must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Specification***

The disclosure is objected to because of the following informalities: there are no headings, e.g. Brief Description of the Drawings", etc., therein. Appropriate correction is required.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-6, 9 and 20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 38, 40 and 41 of copending Application No. 10/070,803. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the copending and instant applications claim a refrigerator shelf comprised of a panel and a plastic structure attached to the panel at its edges. An adhesive can also be provided between the members. Furthermore, it would have been obvious to use two different plastics in the plastic structure, since this type of product is well known in the art for acquiring a specific frame strength, directed flexibility, etc. Note: as stated above, product by process limitations are not given weight in article claims.

Claims 7, 8 and 19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 38, 40 and 41 of copending Application No. 10/070,803 in view of Caruso et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the co-pending and instant applications claim a refrigerator shelf comprised of a panel and a plastic structure attached to the panel at its edges. Furthermore, it would have been obvious to add assembly elements to the shelf, such as is taught by Caruso (by elements 16), to provide for a drawer under the shelf, thereby increasing the storage space in the refrigerator. The elements have first, second and third parts (46,56 and 54, respectively).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 7-9, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Caruso et al. Caruso teaches a refrigerator shelf (12) comprised of a panel (30) and a plastic structure (34) attached to the panel at its edges. Furthermore, elements (16) having first, second and third parts (46,56 and 54, respectively) are

attached to the bottom of the shelf. Note: as stated above, product by process limitations are not given weight in article claims. Also, it should be noted that the plastic structure of Caruso would inherently be laterally pressure fit relative to the panel.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Caruso et al. Caruso teaches a shelf (12) made up of a plastic frame (34), a glass panel (30) and assembly elements (16). For claim 4, Caruso fails to teach that the plastic frame is made of two different plastics. The examiner takes Official notice that plastic structures constructed using two different types of plastics are well known in the art. Therefore, it would have been obvious to use two different plastics in the plastic structure of Caruso, since this type of product is well known in the art, e.g. for acquiring a specific frame strength, directed flexibility, etc. For example, the flexible plastic would be useful adjacent the glass panel for panel insertion reasons and the more rigid plastic would be useful adjacent the elements for a stronger point of attachment.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Caruso et al in view of Cherry et al. Caruso teaches a shelf (12) made up of a plastic frame (34) forming a continuous internal U-shaped channel (see Figs. 2 and 4) which holds a glass

panel (30) therein. For claim 6, Caruso fails to teach a bond/adhesive between the glass and plastic frame. Cherry teaches a shelf wherein a glass sheet is held in a frame channel via adhesive (see column 2, lines 59-65). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the shelf of Caruso by adding adhesive between its frame and glass panel, such as is taught by Cherry, to provide a means to more securely/permanently hold the glass panel within the frame channel.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet M. Wilkens whose telephone number is (703) 308-2204. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (703) 308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



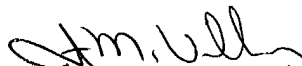
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Wilkins

May 27, 2004

  
JANET M. WILKENS  
PRIMARY EXAMINER  
Art Unit 3637